

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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Case No.: 00B41065-
00B41196

IN RE:

FAMILY GOLF CENTERS, INC.,

REPLY AFFIRMATION

Debtor.

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TO THE HONORABLE STUART M. BERNSTEIN, UNITED STATES BANKRUPTCY
JUDGE:

Petitioner, COMMERCIAL REFRIGERATION replying to the
objections of the debtor and debtors in possession as follows:

The objections stated to granting COMMERCIAL any relief
from the stay are predicated upon the following:

1. Statutory time for COMMERCIAL to file a Notice of
Mechanic's Lien has run:

A. In response to this objection it is to be noted
that the well established Case Law provides that a creditor seeking
to avail itself of the protections of the New York Lien Law provide
that the creditor has eight months from the completion of it's
work to file a Notice of Mechanic's Lien. If there had not been
the filing of the Chapter 11 Petition and the imposition of the
automatic stay from which COMMERCIAL is now seeking relief the
Notice of Mechanic's Lien would have long since been filed. It
is well established Case Law that the intervening stay tolls the
Statute of Limitations and therefore the first objection has no
validity in fact or law.

2. The Second Objection stated on behalf of the debtor
claims that COMMERCIAL had a security interest in the ice arena

refrigeration equipment installed only until the purchase price was paid in full and claims further that the debtors have paid the purchase price "in full"

A. This Argument is specious at best because the debtors are now seeking to make divisible a Contract which by it's terms and conditions is clearly indivisible. I respectfully refer the court to the contract which is annexed to the Application of COMMERCIAL and the court will readily ascertain that the total Contract price is the sum of \$874,000.00 which was the purchase price for specified items to be delivered and installed by COMMERCIAL which included a Refrigeration System consisting of three refrigeration compressors, a chiller vessel, various pumps and an electrical panel, the skid to be completely wired and piped between the various mechanical components, a BAC Evaporative Condensor, two heating and cooling systems for ice rink floors complete with piping to connect floors to the refrigeration plat and the concrete work for the two floors as specified. Thus the total Contract is a Contract for labor and specified equipment and as such cannot be claimed to be an indivisible Contract as the equipment would serve no function unless the labor was performed. The Contract specifically included in the items being purchased by the debtor was "concrete for the floors." The objection that the additional work orders totalling approximately \$97,612.52 was predicated upon work orders copies of which are annexed hereto and made a part hereof. They include, among other things, a revision in the price of the Contract of the Concrete to be furnished and installed by COMMERCIAL and further to supply and install pipe vibration eliminators hangers, flanges and gaskets extra coring and shipping charges which required additional

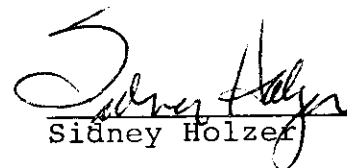
equipment and labor to be performed. Predicated upon the statement of account prepared and submitted to the debtor by COMMERCIAL REFRIGERATION resulted in a total Contract price of \$972,177.52.

B. The express terms of the Contract provide that COMMERCIAL will retain title until the price is paid in full by the Purchaser. Therefore by the very express terms of the Contract COMMERCIAL retained title as a security interest for the payment of the purchase price "in full." Substantial payment does not constitute payment in full and therefore the debtors cannot contend that the debtors have paid for the equipment and that this equipment is necessary for an effective re-organization, as debtor does not have any equity in the equipment until the Contract is paid in full.

C. The express language of the Contract grants COMMERCIAL a security interest in the property until the purchase price is paid in full. It does not therefore enure to the benefit of the debtor that it has "substantially" paid the purchase price.

D. In view of the foregoing, it is respectfully submitted that the Applicant has met the standards for a grant of the vacatur of the automatic stay so as to permit it to file its Mechanic's Lien against the property installed upon the realty and to permit it to proceed to enforce its rights as a Mechanic's Lienor rather than a General Unsecured Creditor.

Dated: Huntington, NY
September 21, 2000


Sidney Holzer